

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

November 10, 2011

- I. **CALL TO ORDER** - The meeting was called to order at 1:31 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Mike Cravens, Chair; Mike Owens; Marie Copeland; Frank Penn; Eunice Beatty (arrived at 1:33); Carla Blanton; Derek Paulsen; Lynn Roche-Phillips and William Wilson. Will Berkley and Patrick Brewer were absent.

Planning Staff Present – Chris King; Bill Sallee; Barbara Rackers; Jimmy Emmons; Tom Martin, Cheryl Gallt; Chris Taylor, Denice Bullock, Traci Wade and Araba Prah. Other staff members in attendance were: Hillard Newman, Division of Engineering; Jeff Neal, Division of Traffic Engineering; Captain Charles Bowen, Division of Fire & Emergency Services; Tim Queary, Division of Streets, and Roads and Forestry; Rochelle Boland, Department of Law.

- II. **APPROVAL OF MINUTES** – The Chair noted that there were no prior Planning Commission meeting minutes to be considered at this time.

- III. **POSTPONEMENTS OR WITHDRAWALS** – The Chair asked if anyone in the audience or staff wished to request postponement or withdrawal of any items listed on the Meeting Agenda.

- a. **BOAR 2011-2: KATHY AND SHAILENDRA CHOPRA** – an appeal of a Board of Architectural Review denial of an iron fence with brick columns near the front of the property, located at 444 Fayette Park.

Representation – Kathy Chopra, applicant, was present, and requested postponement of BOAR 2011-2 to the January 12, 2012, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Owens, seconded by Ms. Roche-Phillips, and carried 8-0 (Beatty, Berkley and Brewer were absent) to postpone BOAR 2011-2 to the January 12, 2012, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, November 3, 2011, at 8:30 a.m. The meeting was attended by Commission members: Frank Penn, Will Berkley, Derek Paulsen, Eunice Beatty, Mike Owens and Marie Copeland. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Cheryl Gallt, Chris Taylor, Denice Bullock, Jimmy Emmons and Barbara Rackers, as well as Captain Charles Bowen, Division of Fire & Emergency Services and Rochelle Boland, Law Department. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- A. **CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

Criteria:

- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
- (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
- (3) no discussion of the item is desired by the Commission; and
- (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
- (5) the matter does not involve a waiver of the Land Subdivision Regulations.

Requests can be made to remove items from the Consent Agenda:

- (1) due to prior postponements and withdrawals,
- (2) from the Planning Commission,
- (3) from the audience, and
- (4) from Petitioners and their representatives.

At this time, the Chair requested that the Consent Agenda items be reviewed.

Note: Ms. Beatty arrived at this time.

Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items, and the other item listed had been recommended for reapproval. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2011-113F: GESS PROPERTY, UNIT 6-I (12/31/11)* - located at 4148-4156 Needlerush Drive.
(Council District 7) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Exactions to the approval of the Division of Planning.

2. DP 2011-89: CARE INN OF LEXINGTON (WHITE & CURLESS PROPERTY) (AMD) (12/31/11)* - located at 2770 Palumbo Drive. (Council District 7) **(Midwest Engineering)**

Note: The purpose of this amendment is to add a porte-cochere, to reduce the parking and to correct a street cross-section.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.

3. DP 2011-90: BREAD BOX LEXINGTON (12/31/11)* - located at 501 West Sixth Street.
(Council District 1) **(Studio Ives Architect)**

Note: This plan requires the posting of a sign and an affidavit of such.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection plan.
 6. Division of Fire's approval of emergency access and fire hydrant locations.
 7. Division of Waste Management's approval of refuse collection.
 8. Remove historic property lines & complete written scale.
 9. Clarify cross-sections, including right-of-way and improvements.
 10. Resolve building/property line discrepancy along railroad right-of-way.
 11. Document Board of Adjustment's approval regarding the extension of I-1 regulations into the R-3 zoning of the property.
 12. Clarify building coverage, open space and floor area site statistics.
 13. Clarify purpose of internal KU easement.
 14. Clarify property uses (in parentheses).
 15. Resolve zone-to-zone and vehicular use area screening.
 16. Addition of grease trap note to the approval of Division of Water Quality (Sanitary Sewers).
4. DP 2006-37: NEWMARKET, UNIT 7 AND UNIT 1 (AMD) (1/1/12)* – 1321, 1281 and 1501 Deer Haven Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: This plan requires the posting of a sign and an affidavit of such. The Planning Commission originally approved this plan on September 9, 2006 subject to the conditions listed below.

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Urban Forester's approval of tree preservation plan.

* - Denotes date by which Commission must either approve or disapprove plan.

5. Greenspace Planner's approval of the treatment of greenways/bike trails and pedestrian movement.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Solid Waste's approval of refuse collection.
8. Approval of street addresses by e911 staff.
9. Addition of purpose of amendment note.
10. Denote: Lots 13 through 24 will front on Deer Haven Lane.
11. Depict Tree Protection Area (TPA) extending on lots fronting Polo Club Blvd. (per previous plan).
12. Provided the Commission grants a finding of the Land Subdivision Regulations regarding private access easements.
13. Move lot lines out of private access easement, and change status of street to a private alley not less than 20 feet.

As part of the Planning Commission's original approval, the following findings were adopted for the use of private access easements:

1. The applicant could satisfy the Subdivision Regulation's requirement for lot frontage by lotting the proposed lots to Deer Haven Lane. The waiver will allow the creation of a large open space under single ownership, rather than 24 separate lots.
2. The proposed 24 lots will have rear access via a private street alley.
3. A design innovation will be realized that preserves the open space in single ownership without compromising the objectives of the Subdivision Regulations.

The Planning Commission also found that the amended Final Development Plan for DP 2006-37: NEWMARKET, UNIT 7 and UNIT 1 (AMD) was in compliance with the Future Land Use, Community Design, and Infrastructure elements of the Expansion Area Master Plan for the following reasons:

1. The proposed townhouse/single family detached development is an allowable use, and is within the density recommended by the EAMP.
2. The applicant has designed this townhouse development to face all of the public streets, serving the new townhouse units by way of a private alley to the rear. The applicant will integrate the townhouse units with the existing single family residential development in the area, while creating pedestrian corridors to the proposed open spaces that all residents in the neighborhood will be able to enjoy.
3. The EAMP requires a sanitary sewer trunk line on the subject property, which has been built and dedicated to the Urban County Government.

Note: The applicant now requests reapproval of the plan. Article 23A of the Zoning Ordinance has not been materially amended since this plan was originally approved.

The Subdivision Committee Recommended: **Reapproval**, subject to the original conditions, revising the following:

4. Urban Forester's approval of tree preservation plan and required street tree information.

In conclusion, Mr. Sallee said that the staff had received the required documentation from the applicant regarding the posting of a sign and an affidavit of such for DP 2011-90: BREAD BOX LEXINGTON and DP 2006-37: NEWMARKET, UNIT 7 and UNIT 1 (AMD). He said that the items listed on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed for discussion purposes.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda. There was no response.

Action - A motion was made by Ms. Beatty, seconded by Mr. Wilson, and carried 9-0 (Berkley and Brewer were absent) to approve the items listed on the Consent Agenda.

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for consideration of these remaining plans is as follows:

- Staff Report(s)
- Petitioner's Report(s)
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request
- Rebuttal – (a) petitioner's comments, (b) citizen comments, and (c) staff comments
- Commission discusses and/or votes on the plan

1. **DEVELOPMENT PLANS**

- a. DP 2011-91: RED MILE MIXED-USE DEVELOPMENT (12/31/11)* - located at 1200 Red Mile Road.
(Council District 11) **(Vision Engineering)**

The Subdivision Committee Recommended: **Postponement**. There were some questions regarding the building orientation to Red Mile Road, the connection to Nelms Avenue and the timing of Red Mile Road improvements.

* - Denotes date by which Commission must either approve or disapprove plan.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection.
11. Correct proposed parking and vehicular use area in site statistics.
12. Denote location of construction access points.
13. Addition of tree protection information.
14. Denote number and location of trees to be planted to meet the tree canopy requirements.
15. Correct note #1 and remove notes #2 & 3.
16. Remove off-site private street information.
17. Denote private street maintenance responsibility.
18. Discuss outlot building orientation to Red Mile Road.
19. Discuss access spacing between buildings 23 & 24.
20. Discuss the pedestrian access from building 7 to buildings 8 through 10.
21. Discuss the northernmost access point offset.
22. Discuss the access across from Unity Drive.
23. Discuss access to Nelms Avenue and the adjoining properties from private street.
24. Discuss pedestrian connections from the outlots to Red Mile Road.
25. Discuss status of all interior street sections and Red Mile Road, including bicycle access.
26. Discuss timing of "10' bike/pedestrian facilities" and road widening along frontage/greenway.
27. Discuss "L-L" cross-section dimensions.

Staff Presentation – Mr. Taylor identified the plan, and noted that the subject property is located at 1200 Red Mile Road. He presented a rendering of this final development plan, and oriented the Commission to the surrounding street system. He said that the subject property is located north of Red Mile Road between South Broadway and Versailles Road.

Mr. Taylor said that this proposed development consists of 62 acres that is zoned MU-3. He then said that the purpose of this request is to develop 940,000 square feet of floor area, with approximately 480,000 square feet designated for commercial use; 273,000 square feet is designated for residential use and 184,000 square feet is designated for a parking structure. There will be 2,000 parking spaces provided.

Mr. Taylor said that the Subdivision Committee reviewed the applicant's request, and recommended postponement, noting the conditions listed on today's agenda. Since the Subdivision Committee meeting, the applicant had submitted a revised development plan to the staff that addressed many of the deficiencies and issues previously identified. Based upon the new submittal, the staff can now recommends approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection.
11. ~~Correct proposed parking and vehicular use area in site statistics~~ cul-de-sac detail conflict with plan.
12. ~~Denote location of construction access points.~~
13. ~~Addition of tree protection information.~~
14. ~~Denote number and location of trees to be planted to meet the tree canopy requirements.~~
15. ~~Correct note #1 and remove notes #2 & 3.~~
16. ~~Remove off site private street information.~~
17. ~~Denote private street maintenance responsibility.~~
18. ~~Discuss outlot building orientation to Red Mile Road.~~
19. ~~Discuss access spacing between buildings 23 & 24.~~
20. ~~Discuss the pedestrian access from building 7 to buildings 8 through 10.~~
21. ~~Discuss the northernmost access point offset.~~
12. 22. Discuss the access across from Unity Drive.
23. ~~Discuss access to Nelms Avenue and the adjoining properties from private street.~~
24. ~~Discuss pedestrian connections from the outlots to Red Mile Road.~~

25. ~~Discuss status of all interior street sections and Red Mile Road, including bicycle access.~~
13. 26. ~~Discuss Resolve timing of "10' bike/pedestrian facilities" and road widening along frontage/greenway~~ Revise note #10 to read: "When development of 50% of the commercial floor area is complete, developer shall widen Red Mile Road and make improvements at the intersection of Versailles Road and South Broadway."
27. ~~Discuss "L-L" cross-section dimensions.~~

Mr. Taylor gave a brief explanation of the revised conditions, and noted that conditions #1 through 10 are typical "sign-offs" from the different local government divisions. Directing the Commission's attention to the rendering, he said that the applicant had previously proposed a residential area in the northern portion of the site. With the revised submission, this area is now being shown as a future paddock area, with a cul-de-sac terminating the new street. However, in reviewing the development plan, the cul-de-sac detail listed on the submittal conflicts with the plan information. The applicant will need to correct this information (condition #11).

Mr. Taylor said that conditions #12 through 17 were issues previously identified by the Technical Committee; and with the revised submission, the applicant has addressed those concerns and those conditions can be deleted from the original Committee recommendations.

Mr. Taylor then said that conditions #18 through 27 were discussion items that were deferred in 2009 from the preliminary development plan to the final development plan. He said that the applicant has addressed many of these discussion items with simple changes or additions to the plan. One of the changes that was made was adding 3 notes to the development plan that addressed building façades and orientation of the outlots along Red Mile Road. He then said that on the preliminary development plan, there was an issue with the access spacing between buildings 23 and 24, as well as pedestrian access from building 7 to buildings 8 through 10. The applicant is proposing a 10-foot pedestrian and bike access along Red Mile Road, as well as additional connections for pedestrian and bike access to Red Mile Road.

Mr. Taylor said that there was also a concern with providing an internal connection to the Red Mile Property. He said that the applicant is proposing an access connection from Nelms Avenue to the subject property and the adjoining properties. He noted that the all interior streets would be private access easements.

Mr. Taylor said that there was an issue regarding the timing of the 10' bike and pedestrian facilities, as well as the road widening along the Red Mile Road frontage and greenway area. He then said that the applicant had added a note to the latest submission that reads: "When 50% of the development is complete, the developer shall widen Red Mile Road, as well as the bike and pedestrian improvements." The staff had a concern with the amount of square footage being proposed on site, and asked that the applicant revise this note to read: "When development of 50% of the commercial floor area is complete, developer shall widen Red Mile Road and make improvements at the intersections at Versailles Road and South Broadway."

Mr. Taylor directed the Commission's attention to the access road behind Tattersalls leading toward Curry Avenue, and said that the applicant originally proposed 21' of asphalt (curb-to-curb); but the staff was unsure if 21' would be sufficient for emergency vehicles. With the revised submission, the applicant is now proposing 24' of asphalt.

Mr. Taylor said that at the preliminary development plan stage, the access across from Unity Drive was a concern for both Traffic Engineering and Planning. He then said that Unity Drive is located at the apex of the curve in Red Mile Road, and this concerned the staff with vehicles exiting the subject site onto Red Mile Road. The curve of Red Mile Road limits the view of motorists and/or pedestrians leaving this area; and in speaking with Traffic Engineering, it was recommended that the applicant should add a note to the development plan regarding a traffic signal being installed as well as the timing of installation of this light. He directed the Commission's attention to an infrastructure exhibit in the Red Mile Development Plan, and said that there were three traffic signals identified in this study that would be needed. One of the signalized lights being recommended is at the apex of the curve in Red Mile Road at the entrance opposite Unity Drive. He then said that the staff is recommending adding a new condition #12 to read: "Addition of notes regarding traffic signals to the approval of the Division of Traffic Engineering."

In conclusion, Mr. Taylor said that the staff is recommending approval of the applicant's request, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection.
11. Correct cul-de-sac detail conflict with plan.
12. Addition of notes regarding traffic signals to the approval of the Division of Traffic Engineering.

13. Revise note #10 to read: When development of 50% of the commercial floor area is complete, developer shall widen Red Mile Road and make improvements at the intersection of Versailles Road and South Broadway.

Planning Commission Questions – Ms. Roche-Phillips said that there are 62 acres zoned MU-3, and asked how much open space is required. Mr. Taylor said that the open space requirement is 15% of the net acreage and the applicant is proposing 23% on their site.

Ms. Roche-Phillips asked if there is an overall footprint and lot coverage for the buildings. Mr. Taylor said that the total MU-3 building coverage is allowed a maximum of 50%, but the applicant is proposing 18.5%. He noted that there is a lot of surface parking proposed on this development.

Mr. Owens asked the square footage of the residential units, as well as the numbers of bedroom unit being proposed. Mr. Taylor said that originally the applicant was proposing 204 units on 297,000 square feet; but with the revised development plan, there are now 168 units on 273,780 square feet. He then said that there will be a total of 360 bedrooms.

Mr. Owens said that it seems the orientation of the buildings to Red Mile Road has been resolved, but asked if there any design features for the proposed outlots facing Red Mile Road. Mr. Taylor said that the applicant had made it clear that they wanted to place private covenants and restrictions on the development plan; however, the staff felt it was not appropriate since this restriction could not be enforced by the local government. He then said that, independent of those restrictions, there are 3 notes listed on the development plan that address the outlots facing Red Mile Road, which include the following:

- Note 5 – “Outlots fronting along Red Mile Road shall be designed and oriented in such a way as to screen dumpster pads, mechanical structures and loading areas from the view of Red Mile Road.”
- Note 6 - “Any major amended final development plan involving outlot buildings along the frontage of Red Mile Road shall provided development standards which address building façades and orientation to Red Mile Road.”
- Note 7 – “Outlots will be subject to private architectural façade standards as set forth with the Red Mile Property covenant and restrictions.”

Mr. Owens asked if the Stable of Memories is under separate ownership. Mr. Taylor replied that the staff was unsure if the Stable of Memories is under separate ownership; but it is zoned differently than the subject property (A-U), and it is not part of this development plan request.

Mr. Owens asked if there is parking provided for the Stable of Memories. Mr. Taylor pointed out on the development plan the area being proposed for parking.

Mr. Penn clarified that the Stable of Memories is owned by a foundation rather than by the Red Mile. He said that the outlots along Red Mile Road would be serviced through the interior road system and asked if an amended development plans were to be submitted, if those outlots could be granted access to Red Mile Road. Mr. Taylor said that the applicant could request access in the future to Red Mile Road; however, the basic site access patterns are being set with this request. Mr. Penn said that access to Red Mile Road would be a major change to the development plan. He then said that the Unity Drive access point is at the apex of the Red Mile curve, and asked if the Commission could require a signalized light at the time the access opposite of Unity Drive is completed. Mr. Taylor said that the intersection of Unity Drive and Red Mile Road is the primary concern for the Division of Traffic Engineering. He then said that it is the staff's understanding that when the access to this development opens, a signalized light will need to be installed. This issue is still being resolved, but that is their intent. Mr. Penn then asked if the signalized light will be noted on the development plan. Mr. Taylor said that the staff is recommending adding a new condition #12 to read: “Addition of notes regarding traffic signals to the approval of the Division of Traffic Engineering,” which should address their concerns regarding the timing of the traffic signal. Mr. Penn said that this should be highly considered since this would be a dangerous intersection.

Ms. Roche-Phillips asked if there is a breakdown of the number of bedroom units for this development. Mr. Taylor said that the site statistics show 12 townhouse units, 60 apartment units and 96 loft apartments. He then said that in reviewing the rendering being shown at today's meeting, the site statistics and the parking requirements do not match. The applicant is showing 78 one-bedroom units, 96 two-bedroom units and 30 three-bedroom units in the off-street parking requirements.

Representation – Chris Westover, attorney, was present representing the applicant. She noted that Jihad Hallany and Matt Carter, Vision Engineering, as well as Stan Harvey, Urban Collage, were also present at today's meeting.

Ms. Westover said that they have had ongoing discussions with the Division of Traffic Engineering regarding the access across from Unity Drive; and prior to today's meeting, they had proposed a note to the staff that may address everyone's concerns. She said that they are suggesting that vehicular access would not be allowed across Unity Drive until there is a traffic signal installed, which would then be subject to the approval of the Division of Traffic Engineering. She indicated that they are also in agreement with the staff's suggestion of adding a new condition #12.

Ms. Westover then said that, in terms of the Red Mile Development Plan, there will be owner-occupied housing near Bennett Avenue, and there is plenty of room to provide additional housing if needed.

Ms. Westover said that they are in agreement with the revised recommendations and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for reapproval. There was no response.

Planning Commission Question – Mr. Penn said that he had been involved in the planning effort of this area two years ago, and it was not supposed to be an extension of what was developed across the road. He then said that this was supposed to be a “destination” and the race track was a part of that concept, along with residential and commercial uses. He indicated that he was concerned with the student housing coming into this area, considering that there is a high concentration of student housing in the general area. He indicated that he is not against this request; but if this development is to be successful, then they need to be sensitive to what will be placed in this development.

Mr. Owens said that the site statistics and parking requirements do not match, and asked if a new condition could be added to address this concern. Mr. Taylor said that it would be appropriate to add a condition to clarify the total number of units on the property. Mr. Owens asked if there will be 168 units in this development. Ms. Westover said that they can either correct the site statistics or have a condition that would require the replacement of the units that were taken off the proposal. She said that this development still has the room to add back the units that were taken off to bring the number of units back to 204.

Mr. Cravens said that it appears there is additional area for more dwelling units to be added. Ms. Westover said that this development is proposing low density in comparison to what is permitted for the MU-3 zone. She said that there is certainly room to accommodate more housing and mixed-use development. Mr. Cravens asked if the site statistics on the rendering indicate the maximum number of units that can be placed in this development. Ms. Westover said that the number of units listed in the site statistics is the number of units being shown.

Ms. Beatty asked what the applicant is anticipating for this development and the number of units. Ms. Westover said that they are anticipating 204 units, which is what was being proposed on the preliminary development plan. She then said that there would be a mixture of lofts and townhouses, and the units closer to the track would be owner-occupied.

Mr. Penn asked what the maximum density is allowed to be in the MU-3 zone. Ms. Westover said that that would depend on the lot coverage. Mr. Penn said that it was mentioned that this development has a low density for an MU-3 zone, and he is concerned with the specific uses changing this area. Ms. Westover asked if it is the Commission's concern that the housing would be decreased. Mr. Penn said that he is assuming that the density is on the low side; noting that he doesn't like to assume anything. He asked if the density is on the low side in order to make this development provide a different type of housing. He said that the typical mixed-use developments are more intense than what is being proposed with this development. Ms. Westover said that the reason the four housing units were removed from the development was to provide additional area near the super paddock not to provide a different type of housing.

Mr. Cravens said that the number of units being proposed is what they are requesting and if they decide to make any changes the development plan will be amended, which Ms. Westover verified. She said that the housing being proposed on this development is geared toward families, and there will be owner-occupied housing, which is different from what is across the street. Mr. Cravens asked if this type of housing will be on the higher end. Ms. Westover said that she could not speak to that.

Mr. Owens said that if the amount of housing changes, the applicant would need to submit an amended development plan. He then said that the number of units needs to be clarified since they do not match. Mr. Taylor said that the development plan does show 168 units in the site statistics, while the parking requirements read 204. Mr. Owens confirmed that there will be 168 units on this development. Mr. Taylor replied affirmatively.

Matt Carter said that the only change made on the revised submittal from the preliminary development plan is the removal of the units near the super paddock area.

Ms. Beatty said that at the Subdivision Committee meeting, the applicant spoke about this development as being family oriented, and asked where the additional greenspace will be located. She also asked if the Stable of Memories could be used for family activities. Mr. Taylor said that this request does meet the minimum requirements for open space; but as for the Stable of Memories, it is not part of this request and can not be calculated as part of their requirement.

Ms. Copeland noted that she does not see an area for a park on this development. She asked what will keep this area from becoming all residential. Ms. Westover said that the zoning restrictions will not allow MU-3 to become fully residential. Ms. Copeland said that the applicant could plead hardship and request this area to be rezoned. Ms. Westover said that that decision would only be permitted upon the actions of the Planning Commission and the Urban County Council.

Action - A motion was made by Ms. Blanton to approve DP 2011-91: RED MILE MIXED-USE DEVELOPMENT, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection.
11. Correct cul-de-sac detail conflict with plan.
12. Addition of notes regarding traffic signals to the approval of the Division of Traffic Engineering.
13. Revise note #10 to read: "When development of 50% of the commercial floor area is complete, developer shall widen Red Mile Road and make improvements at the intersection of Versailles Road and South Broadway.

Discussion of Motion – Ms. Roche-Phillips asked if condition number 12 was to address the concerns noted by the Commission and if a condition should be added to limit the number of units on this development. Ms. Blanton said that it was stated during the meeting that there would be 168 units on this development. Mr. Taylor said that the Commission could add a new condition #14 to clarify the site statistics.

Ms. Blanton amended the original motion to the original conditions, adding the following:

14. Clarify site statistics to specifically read 168 units.

The motion was seconded by Ms. Roche-Phillips, and carried 11-0.

- b. PLAN 2007-82F: SHARKEY PROPERTY, UNIT 3 (7/12/07)* – located at Towne Square Park.
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on May 10, 2007, and reapproved it on August 14, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street addressing by e911 staff.
5. Urban Forester's approval of tree preservation plan.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Correct site statistics.
8. Label Lot 44 and the parking area in Unit 2-C.
9. Identify lot frontage and access for Lots 45-49 per the approved development plan.

Section 1 was recorded on August 8, 2007 and Section 2 was recorded on February 19, 2009. The applicant is now requesting a reapproval of the remaining portions of Unit 3.

The Staff Recommends: Reapproval, subject to the original conditions, revising the following:

3. Building Inspection's approval of landscaping ~~and required street tree information~~.
5. Urban Forester's approval of tree preservation plan and required street tree information.

Staff Presentation – Ms. Gallt identified the final subdivision plan on the regular Meeting Agenda, noting that the subject property is located on Towne Square Park. She presented a rendering of this plan, and said that the Planning Commission had originally approved this item on May 10, 2007. She oriented the Commission to the surrounding street system, and said that this development consists of a mixture of both single family and attached detached homes.

Ms. Gallt said that the applicant is now requesting reapproval of this plan in order to move forward with the remaining development on Unit 3. She then said that Section 1 was recorded on August 8, 2007 and Section 2 was recorded on February 19, 2009, leaving the reminder for recordation.

Ms. Gallt said that the staff is recommending reapproval of the applicant subdivision plat, subject to the original conditions, revising the following two conditions:

3. Building Inspection's approval of landscaping ~~and required street tree information~~.
5. Urban Forester's approval of tree preservation plan and required street tree information.

* - Denotes date by which Commission must either approve or disapprove plan.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the staff's recommendations and requested reapproval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for reapproval. There was no response.

Action - A motion was made by Ms. Blanton, seconded by Mr. Owens, and carried 11-0 to reapprove PLAN 2007-82F: SHARKEY PROPERTY, UNIT 3, subject to the original conditions, revising the following:

3. Building Inspection's approval of landscaping ~~and required street tree information.~~
5. Urban Forester's approval of tree preservation plan ~~and required street tree information.~~

C. PERFORMANCE BONDS AND LETTERS OF CREDIT – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Owens, seconded by Ms. Beatty, and carried 11-0 (Copeland abstained) to approve the release and call of bonds as detailed in the memorandum dated November 10, 2011, from Ron St. Clair, Division of Engineering.

V. ZONING ITEMS - The Zoning Committee met on Thursday, November 3, 2011, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Mike Cravens, Lynn Roche-Phillips, and Patrick Brewer. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. URBAN COUNTY PLANNING COMMISSION ZONING MAP AMENDMENT

1. **MAR 2011-15: URBAN COUNTY PLANNING COMMISSION** - petition for a zone map amendment to modify a Neighborhood Design Character Overlay (ND-1) zone for 53.7± net (67.5± gross) acres, for properties located at 601-821 Cooper Drive, 1212-1251 Eldemere Road, 1203-1304 Kastle Road, 600-818 Montclair Drive, 1213-1283 Scoville Road, 1200-1252 Summit Drive, and 1500-1600 Bates Creek Road (even addresses only).

Proposed Design Standard Amendment:

EXISTING STANDARD:

3. Landscaping Requirements
 - a. No front yard fences or walls allowed, except for properties facing Cooper Drive and Bates Creek Road. Permitted fences may be up to 4 feet in height and a minimum of 2 feet from the sidewalk, parallel to the public right-of-way.
 - b. Allowable wall/fence materials include, but are not limited to: brick; stone; wood and iron. Chain link fences are prohibited.

* - Denotes date by which Commission must either approve or disapprove plan.

PROPOSED AMENDMENT:

3. Landscaping Requirements
 - a. No front yard fences or freestanding walls allowed, except for properties facing Cooper Drive and Tates Creek Road.
 - i. Permitted fences may be up to 4 feet in height and a minimum of 2 feet from the sidewalk, parallel to the public right-of-way.
 - ii. Retaining walls shall be permitted on all properties, subject to a maximum height of 18" above the unbalanced fill.
 - b. Allowable wall/fence materials include, but are not limited to: brick; stone; wood and iron. Chain link fences are prohibited.

(NOTE: Underlined text above indicates a proposed addition to the adopted ND-1 design standards for the Montclair area.)

The Zoning Committee made no recommendation.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested modification of the Neighborhood Design Character (ND-1) overlay zone will not adversely affect the public health, safety or welfare, because retaining walls in front yards do not obstruct or overhang the public sidewalk, or otherwise encroach into the public right-of-way. Additionally, retaining walls will prevent soil erosion from front yards with a moderate to steep slope, thereby keeping the public sidewalk free of silt or soil that might wash out or run off. As such, this will serve to prevent a hazard or nuisance to the public.
2. Permitting retaining walls in front yards throughout the Montclair neighborhood will allow the existing essential character of the overlay district to continue (that is, with walls at or very near the public sidewalk), and is in keeping with the Montclair neighborhood's general intent and preservation goals.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restriction is proposed to replace the previously approved Design Standard #3 for the subject properties via conditional zoning:
 3. Landscaping Requirements
 - a. No front yard fences or freestanding walls allowed, except for properties facing Cooper Drive and Tates Creek Road.
 - i. Permitted fences may be up to 4 feet in height and a minimum of 2 feet from the sidewalk, parallel to the public right-of-way.
 - ii. Retaining walls shall be permitted on all properties, subject to a maximum height of 18" above the unbalanced fill.
 - b. Allowable wall/fence materials include, but are not limited to: brick; stone; wood and iron. Chain link fences are prohibited.

The modified restriction is appropriate, given the extensive study originally undertaken by the Neighbors of Montclair and more recently supplemented by the staff, and is necessary to maintain that existing character in the future.

Staff Presentation - Mr. Sallee identified the next item on the regular Meeting Agenda, and said that this is a petition for a zone map amendment to modify an existing Neighborhood Design Character Overlay (ND-1) zone for 53.7 net (67.5 gross) acres. He directed the Commission to the staff report, as well as to the notification map for the Montclair neighborhood's ND-1 request. He said that properties within the zone map amendment area includes properties located at 601-821 Cooper Drive, 1212-1251 Eldemere Road, 1203-1304 Kastle Road, 600-818 Montclair Drive, 1213-1283 Scoville Road, 1200-1252 Summit Drive, and 1500-1600 Tates Creek Road (even addresses only). He noted that the Montclair neighborhood already has an existing ND-1 Overlay zone in this area.

Mr. Sallee directed the Commission's attention to the rendered zone map to orient the Commission to the boundaries of the Montclair neighborhood's ND-1 Overlay Zone. He said that the Montclair neighborhood is generally located between Tates Creek Road and the University of Kentucky and the KET studio on Cooper Drive. He noted that the Chevy Chase area has a separate ND-1 Overlay in place, which predates this ND-1 Overlay, and is not part of this amendment.

Mr. Sallee said that the Montclair neighborhood ND-1 Overlay currently has 9 restrictions set in place that deal with walls and fences, setbacks and yard requirements. He then said that what has come to light with this amendment is there are no existing restrictions addressing retaining walls. The staff has identified at least 17 retaining walls in the Montclair neighborhood that are currently located within 10 feet of a public sidewalk.

Mr. Sallee said that the Montclair Neighborhood Association had requested that the Planning Commission initiate the zone map amendment to modify the existing Neighborhood Design Character Overlay (ND-1) zone to include new restrictions for retaining walls. Mailed notification was sent out to the property owners within the 400 foot radius.

Mr. Sallee directed the Commission's attention to the staff report, and said that the proposed amendment to the restrictions include landscaping requirements (Section 3A), which will not allow front yard fences or freestanding walls, except for the properties facing Cooper Drive and Tates Creek Road. He then said that this change would allow fences up to 4 feet in height at a minimum of 2 feet from the sidewalk.

Mr. Sallee said that during the staff's research, at least 10 percent of the Montclair residential properties have retaining walls along the front of the houses, and at least 13 out of 17 of these walls are in close proximity to the public sidewalk. He then said that there are a few retaining walls that are set back 2 feet from the sidewalk, while other walls are 10 feet back. He said that, in reviewing the Montclair neighborhood, these retaining walls have been constructed with a variety of materials, including stone (52.9%), brick (23.5%), masonry (11.8%) and wood (5.8%).

Mr. Sallee said that the original intent of the ND-1 restrictions was to preserve the character of the Montclair neighborhood, and through the original design study and zone change request, the Neighbors of Montclair identified their neighborhood preservation goals as the following:

1. Preserve the existing neighborhood land use, which is entirely single-family residential;
2. Encourage new construction and additions that are compatible with the predominant massing, height and architectural character of the neighborhood, but recognizing differences in individual streets;
3. Utilize site planning standards reflective of the existing patterns of yards, setbacks and garages; and
4. Encourage community interaction and safety for pedestrians and bicyclists.

Mr. Sallee noted that Ms. Wade would present the proposed changes to the ND-1 restrictions, and would display a schematic showing proposed height of the retaining wall with the fill material behind.

Ms. Wade distributed four letters of support to the Commission, as well as entered into the record the 2010 Montclair Study and the supplemental information.

Ms. Wade directed the Commission's attention to the previously distributed staff exhibit, and said that Article 6-7(c)(2)(a) of the Zoning Ordinance contains the findings required for an ND-1 Overlay zone amendment. She noted that this proposal is the first to amend a previously approved ND-1 Overlay zone. She said that in 2009, a text amendment to this section of the Zoning Ordinance was initiated and approved by the Commission. She then said that the Montclair neighborhood has now requested an amendment due to a Building Inspection ruling regarding front yard retaining walls. The key to this request is that the general intent and the preservation goals of the ND-1 Overlay are still being met.

Ms. Wade said that the restrictions in Article 15-4 and Article 3-3 of the Zoning Ordinance still apply to the ND-1 Overlay in relation to the height of the wall and the setback within the sight triangle. She then said that in reviewing the schematic of the retaining wall, the maximum height of the wall above an unbalanced fill would be 18" for this neighborhood. The staff spoke to the Division of Building Inspection and they felt that two feet above an unbalanced fill was appropriate for this area. She said that the Montclair neighborhood also researched the existing retaining walls, and noted that none were more than 18" above the unbalanced fill. With that information, the staff felt that 18" above unbalanced fill was appropriate, and submitted the proposed change to the Commission for initiation.

Ms. Wade said that the staff is recommending approval of the proposed change, noting that the Zoning Committee made no recommendation on this request at their November 3, 2011 meeting.

Mr. Sallee concluded the staff's report by saying that the staff recommends approval, for the following reasons:

1. The requested modification of the Neighborhood Design Character (ND-1) overlay zone will not adversely affect the public health, safety or welfare, because retaining walls in front yards do not obstruct or overhang the public sidewalk, or otherwise encroach into the public right-of-way. Additionally, retaining walls will prevent soil erosion from front yards with a moderate to steep slope, thereby keeping the public sidewalk free of silt or soil that might wash out or run off. As such, this will serve to prevent a hazard or nuisance to the public.
2. Permitting retaining walls in front yards throughout the Montclair neighborhood will allow the existing essential character of the overlay district to continue (that is, with walls at or very near the public sidewalk); and is in keeping with the Montclair neighborhood's general intent and preservation goals.
3. Under the provisions of Article 6-7 of the Zoning Ordinance, the following use restriction is proposed to replace the previously approved Design Standard #3 for the subject properties via conditional zoning:
 3. Landscaping Requirements
 - a. No front yard fences or freestanding walls allowed, except for properties facing Cooper Drive and Tates Creek Road.
 - i. Permitted fences may be up to 4 feet in height and a minimum of 2 feet from the sidewalk, parallel to the public right-of-way.
 - ii. Retaining walls shall be permitted on all properties, subject to a maximum height of 18" above the unbalanced fill.
 - b. Allowable wall/fence materials include, but are not limited to: brick; stone; wood and iron. Chain link fences are prohibited.

The modified restriction is appropriate, given the extensive study originally undertaken by the Neighbors of Montclair and more recently supplemented by the staff, and is necessary to maintain that existing character in the future.

Planning Commission Questions – Mr. Cravens asked if Section 3(a)(i) should be clarified since sidewalks may not be on the property line and it would prevent the fence being built in the right-of-way. Mr. Sallee said that this proposed restriction would not allow a fence to be built in the right-of-way. He then said that the property would need to be researched to find the location of the right-of-way, as well as any possible sidewalk easement that could extend onto the property. He noted that fences are not allowed inside such an easement.

Mr. Cravens said that the wording of this restriction could create confusion, and lead a person to believe that the fence could be built two feet from the sidewalk, not knowing the fence is in the right-of-way. Mr. Sallee said that the wording in question is from the original ND-1 restrictions, and noted that with the original request, the rights-of-way were reviewed; but the staff did not have that information handy at today's hearing. He said that the Commission could change the wording since that section of the ND-1 restrictions was being reviewed at this time.

Ms. Blanton said that, at the last Zoning Committee meeting, the idea of moving the retaining wall in question was discussed, the retaining wall in question would then become illegal. She asked if there is any way to grandfather the one retaining wall and subject future walls to the new restrictions. She said that Goal #4 of the Comprehensive Plan encourages community interaction and safety for pedestrians and bicyclists, and this wall could make it difficult for pedestrians walking their dogs to pass each other. Mr. Sallee said that the staff is unaware of any means that that could be employed to create a grandfathered situation with the wall's set back.

Mr. Owens asked for clarification. He said that the staff had mentioned there are numerous other retaining walls in the subdivision, and that if the Commission addressed the retaining walls today, and required a set back off of the sidewalk, would the existing retaining walls become illegal and need to be redone. Mr. Sallee replied negatively. Mr. Owens said that he believes in moving forward from here and making it reasonable and appropriate for everyone. He said that the retaining wall in question could not fall into the grandfathered category. Mr. Sallee said that the staff is unsure how the retaining wall would be permitted with a new setback requirement.

Ms. Roche-Phillips said that there is a discrepancy between the staff's information and one of the letters regarding the number of retaining walls in this area. Mr. Sallee replied that the staff's information was based upon the retaining walls only in the fronts of the houses. Ms. Roche-Phillips asked if it is the staff's recommendation to allow a retaining wall at the right-of-way and/or at the sidewalk easement, or to have a setback imposed. Mr. Sallee said that since there were so many existing retaining walls located at the back of the sidewalk, and with the intent of the original ND-1 restrictions being to maintain the existing character of the neighborhood, the staff felt that there was enough justification, as the amendment was proposed, to not institute such a setback requirement.

Ms. Beatty indicated that the one household in question would have to correct the wall that is currently there, and asked if the remaining 27 houses are compliant with the new amendment under consideration. Mr. Sallee said that if such a setback were imposed by the Commission, many of the properties in this area would become nonconforming, since more than half of the retaining walls identified by the staff were at the back edge of the sidewalk. He then said that generally, when the staff makes a recommendation on a downzoning or overlay zone, the creation of nonconforming situations heavily weight on the staff's mind. The staff prefers to minimize the creation of nonconforming properties, where possible, since this would be more beneficial to most property owners. He said that under a nonconformity, it's scope can not increase in any way. He then said that the creation of nonconformity is generally something the staff does not generally recommend on a large scale basis for a downzoning or an overlay zone. Ms. Wade added that the reason the other properties would become nonconforming while the one would be illegal would be based upon the timing of their construction. She said that the existing walls were built when there were no restrictions, versus one that was built without a permit within a year after the ND-1 restrictions were first imposed.

Ms. Beatty said that this amendment seems to be based upon one property that would need to remove or adjust the wall. Ms. Wade said that would be true only if the Commission decided to approve a setback restriction. Mr. Sallee noted that as far as the staff is aware, there is only one property in that particular situation. Ms. Beatty asked if the staff's recommendation is to approve the setback. Ms. Wade replied negatively. She said that the staff's recommendation is to allow the retaining wall up to the sidewalk because that best reflects the existing character of the neighborhood.

Mr. Cravens said that in looking at the staff report, it does not say where the retaining wall has to be. Mr. Sallee confirmed that that is correct. Mr. Cravens said that it could then be located anywhere.

Ms. Roche-Phillips said that the question is to allow the property owner the ability to maximize their useable land. She asked if a property is on a sloping hill, and a retaining wall is required, if that retaining wall would be placed at the edge of the sidewalk or easement; or would the retaining wall be required to be offset from the sidewalk to allow more room for pedestrians and bicyclists. Mr. Sallee said that that would be the Commission's decision. Ms.

Roche-Phillips said that she is thinking of the Zoning Committee's discussion about the Complete Streets Manual and hopefully that will be adopted. She said she could not imagine that that one item would be plucked from the rest of the Complete Streets document. Mr. Sallee said that those concerns are more global and a community wide issue that would follow this zoning decision.

Ms. Boland said she wanted to make sure that what has been initiated is a modification to simply clarify that the restrictions on fencing that were originally adopted were for freestanding fences; and to clarify that a retaining wall is also permitted structure. She noted that this set back issue does not exist currently anywhere in the County. She said that it didn't exist here before and the purpose of this amendment was not to create this set back. That has developed through subsequent conversations. She added that she wanted to make sure the Commission knew where the issues came from.

Audience Comments in Favor – The Chair asked if anyone in the audience wished to discuss this request; and if so, each person would have a maximum of three minutes to voice their concerns or comments.

Charles Eckerline, 1252 Summit Drive, was present, and noted that he was present as a member of the neighborhood association. He clarified that the property in question was his property. He said that the purpose of this amendment is not for a particular wall; but to allow retaining walls in general with no setback being imposed. He then said that for his property there was no ability to have the retaining wall set back from the sidewalk, unless the dirt was removed. Retaining walls are already ubiquitous in the neighborhood, and allowing retaining walls does not change the character or quality of the neighborhood. He said that they had made \$3,000 in repairs to the sidewalk due to the embankment eroding.

Mr. Eckerline said that the neighborhood association had distributed postcards to vote on the proposed ND-1 amendment, despite what testimony is given at today's hearing, and 73% of the area was in favor of this change. He then said that they are new residents of this neighborhood, and they were not aware that a permit was required for the retaining wall. He noted that there are many retaining walls in this area that are not setbacks from the sidewalk, but rather, they are located next to the sidewalk.

Stan Harvey, 1229 Scoville Road, was present representing himself and the Neighbors of Montclair. He said that the Planning Commission was the original applicant for their ND-1 Overlay, and he wanted to extend his appreciation to the Commission members.

Mr. Harvey briefly described the neighborhood's history, and how the ND-1 Overlay came about. He said that they want to protect the character of the neighborhood through a consensus of the property owners in the entire area. He then said that the ND-1 standards created were from a public meeting held by the ND-1 Committee that was created by the neighborhood association, at which time postcards were distributed to the neighborhood. After the adoption of the ND-1 Overlay, there was an issue as to how Building Inspection was interpreting retaining walls in the front yards. He said that the ND-1 restrictions do not allow walls except on Cooper Drive and Tates Creek Road, which was due to pedestrian safety. He then said that there was never any intention to ban retaining walls in this area. This issue is not a singular case, but it is an issue that could affect 179 properties in the future. He said that they believed the responsible response to that concern was to amend the original ND-1 restriction to clarify that it was not their intention to ban retaining walls. He then said that they held a Board meeting, as well as spoke to the neighborhood association membership; it was decided that they would request that the Planning Commission initiate this amendment to their ND-1 overlay zone.

Mr. Harvey said that they are requesting the Commission to consider this amendment; and should there be an additional request from the audience the same standard operating procedures are applied. He said that there must be a neighborhood public meeting held by the ND-1 Committee, as well as postcards distributed to the neighborhood.

Planning Commission Questions – Ms. Blanton asked if 73% of the respondent or the entire area was in favor of this request. Ms. Wade said that it was 73% of the respondents, noting that 50% had responded. Ms. Blanton said that the actual numbers then, are much smaller than 73% of the total number of houses in the neighborhood.

Audience Comments in Opposition – Jerry Price, 1262 Kastle Road, was present. He noted that everyone is not in favor of this amendment, and said that there have been discussions concerning the retaining walls abutting the sidewalks; but to his knowledge there is only one wall that exceeds 18" in height. He is in agreement with the previous comments that were made concerning the width of the sidewalks for pedestrians and bicyclists.

Mr. Price read the following letter into the record.

"The Montclair Association ND-1 overlay is evolving into a real mess. Do those who do not choose to comply with existing regulations need only to cry foul and get the regulations changed to suit their particular situation? Does the process of incessant meeting and time commitments begin anew? Why is there an issue now and not prior to the planning and passage of the ND-1 overlay? Is the city planning to eliminate the grandfather clause? Does cement block equal stone and brick if someone wants to change the existing regulations?"

When the ND-1 process began, the Montclair Association was determined to stop the change occurring within our neighborhood. The meetings, presentations, council meetings and email trails detailed and reexamined lot size usage, building materials and appearance for future development or redevelopment. There were discussions about why an ND-1 overlay was necessary given existing regulations. Permits were required for new construction or major reconstruction projects and individual exceptions were to be addressed on a case-by-case basis.

I can see no reason for any change to the existing ND-1 overlay, with broad changes to current requirements and regulations circumventing a long and deliberate process to protect our neighborhood from individual interpretation."

Ray Pace, 1211 Summit Drive, was present. He said that he was not aware that this amendment would allow the retaining wall to abut the sidewalk. He said that if this is the intent, then why have the restriction of 24" on the existing walls in the neighborhood. He then said that when the final wording was submitted for this amendment, it was different from what was mailed to the neighborhood via the postcards. He said that he does not disagree with retaining walls, but he is concerned with the landscaping and fill that will be allowed. Mr. Pace asked the Planning Commission to deny this proposed amendment to the ND-1 overlay.

Tip Richmond, 1235 Summit Drive, was present. He said that the neighborhood association has spent considerable time on the ND-1 overlay and he thanked the Commission for their time. He noted that, as for the property in question, he is not suggesting that the retaining wall be moved. He said that he doesn't understand the difficulty of creating the grandfathered status, or making it nonconforming. He said that he didn't understand why this could not be accommodated.

Mr. Richmond said that no matter what the language says, the property in question poses an unsafe condition. He then said that staff had mentioned that there are no safety concerns; but there is a safety issue for this corner lot, especially for the people who are disabled. He then said that other neighborhoods are looking at this ND-1 overlay as a guide and there should be a way to refine this proposal to accommodate everyone.

Planning Commission Questions – Ms. Beatty asked if the corner lot is unsafe for pedestrians with the retaining wall or without the retaining wall. Mr. Richmond said that it poses an unsafe area with the retaining wall as is.

At this time, Ms. Copeland excused herself from the Planning Commission to participate as an audience member to give her comments on this proposed amendment, as well as discuss the Leawood, Kansas Complete Streets Manual that will be enforced in January 2012. She noted for the record that she lives at 1236 Summit Drive, and said that this neighborhood is a "walkshed" for the University of Kentucky.

Ms. Copeland submitted several documents to the Planning Commission for their review, and directed their attention to the document named "Role of Commissioners" providing a brief explanation of what makes a good Commissioner.

Ms. Copeland then directed the Planning Commission to the 1999 version of the Complete Streets Manual for Leawood, Kansas, and said that a sidewalk has an area called the "shy zone," which is the area where pedestrians will not walk due to the closeness of the building or wall. She then said that federal legislation recommend that the "shy zone" should be at least 2' in width.

Ms. Copeland said that a sidewalk should be able to accommodate pedestrians' movement such as motorized wheelchairs. She gave an example of one particular lady who is confined to a motorized wheelchair and uses it to walk her dog in the neighborhood. She said that she had asked her what her feelings were on the wall and she had voiced her concerns with not being able to see around the corner. She then said that the federal guidelines for sidewalks state that sidewalk width shall be a minimum of 4', new sidewalks shall be a minimum of 5' and there shall be a buffer width of 2' to 6' depending on the location.

Mr. Cravens noted to Ms. Copeland that her 3 minutes had expired. Ms. Copeland replied that since she had put in 2 hours on this presentation she believed she could keep going. Mr. Cravens replied that he is stating the rules that were adopted by the Planning Commission. Ms. Copeland said that a person in the audience had given her their unused time.

Ms. Copeland said that there should be 5' of clear space because that is what is needed for two people walking side by side or passing one another. She then said that in looking at the examples of the complete streets for Kansas, the report shows that fences, walls and other structures are to be set back from the sidewalk.

Ms. Copeland referenced federal legislation (H.R. 1443), and noted that a summary of this bill was previously distributed to the Commission for their review. She said that the Complete Streets Act of 2009 (H.R. 1443) ensures that future transportation investments made by State Department of Transportation and MPOs create appropriate and

safe transportation facilities through federal funding. She then said that there are exemptions to this bill in that if projects that do not comply with the complete streets regulations; they will lose percentage of federal monies.

In conclusion, Ms. Copeland noted that the Montclair Neighborhood provides a "walkshed" to the University of Kentucky. She said that there is a new development proposed at the corner of Cooper Drive and Kastle Drive, and the owners would like to place their wall at the edge of the sidewalk, which will be a violation of MPO regulations regarding safe transportation facilities. She said that if the Commission were to allow this amendment, no one would benefit from it. She then said that the Montclair Neighborhood is an example of ND-1 overlay, and she believed that this amendment would be taking the ND-1 overlay in the wrong direction. She noted that other neighborhoods, such as the Meadowthorpe Neighborhood, are using them as an example for their ND-1 request.

Planning Commission Questions – Mr. Penn asked Ms. Copeland what would be her suggestion with regards to changing the amendment. Ms. Copeland said that as the amendment is proposed, it should not be approved. She then said that the property in question should be set aside, and the focus should be on future walls in the neighborhood. She suggested that the language in 3.a.i should read: "Permitted fences and retaining walls may be up to 4 feet in height and a minimum of 2 feet from the sidewalk, parallel to the public right-of-way." Mr. Penn asked if the language needed to be tweaked. Ms. Copeland replied affirmatively, adding that this amendment should not address the walls that are already built, but it should address any new walls.

Audience Comments (cont.) – Mitzi Eckerline, 1252 Summit Drive, was present. She submitted the Structural Engineer's report that was done for their property, for the Commission's review, and said that their home was built with a jugged stone veneer, and they did not want to use the same type of stone or mortar due to safety reasons. She then said that there have been three episodes of safety concerns, which include logs rolling down the hill toward the sidewalk, an uneven sidewalk, as well as slips and falls from ice on their steps. She said that the wall is no taller than 4', and the pillars are 18" above the top of the wall

Susan Richmond, 1235 Summit Drive, was present. She said that she in agreement with the proposed amendment, but suggested that the language in 3.a.i should be changed to read: "Permitted fences and walls may be up to 4 feet in height and a minimum of 2 feet from the sidewalk, parallel to the public right-of-way."

Mr. Price, who had previously spoken, said that it seems that the amendment is not the venue best suited for one particular wall, and the amendment to the ND-1 overlay would have a broad effect on the neighborhood. He then said that to achieve the original ND-1 restriction for this area there were multiple meetings and everyone understood what was being done. He then said that now people want to make a change to the original ND-1 restrictions that the Planning Commission adopted.

Susan Dombroski, 700 Montclair Drive, was present. She asked the Commission to consider that if the wall is required to be set back 2' what material would be placed in that area, and how would it be maintained.

Audience Rebuttal – The Chair asked if anyone in the audience wished to rebut any comments made. There was no response.

Staff Rebuttal – The Chair asked if the staff wished to rebut any comments made. Mr. Sallee said that if there is a setback established for new retaining walls, it would result in walls being set back farther on private property and not closer toward the street.

Mr. Sallee said that Mr. Price had mentioned that some of the walls in this area were shorter than the walls that the staff had studied, and this is true.

Mr. Sallee said that Mr. Pace had questioned why the wording of this amendment was different from what was mailed to the neighborhood. He then said that, at the time the Planning Commission initiated this amendment, there was a drafting change from what was sent out on the postcards to address concerns that had been expressed in these replies.

Mr. Sallee directed the Commission's attention to Article 15-4 of the Zoning Ordinance for walls and fences, specifically Article 15-4(b), which deals with the height restrictions of fences. He said that Article 15-4(b) is used countywide, and it allows a 6' wall or fence to be built in a front yard or side street side yard. He again noted that this restriction is for the entire Urban County, even though this ND-1 overlay has a greater restriction placed on it.

Mr. Sallee said that the Division of Building Inspection's interpretation does not consider any retaining walls being permitted in the front yards in the Montclair neighborhood.

Planning Commission Questions – Ms. Blanton asked what the proposed 18" restrictions was based on. Ms. Wade said that the proposed height limit is 18" above the unbalanced fill behind the wall. She then said that the reason this is considered "unbalanced" is because dirt is not on both sides of the wall. She noted that this is a technical

* - Denotes date by which Commission must either approve or disapprove plan.

term that the Division of Building Inspection uses to determine the height of the wall. She said that the actual height of the wall is determined from the base of the slab at ground level.

Mr. Owens asked about the height definition for retaining walls. Ms. Wade said that the Zoning Ordinance does not separately define retaining walls and freestanding walls.

Mr. Penn said that it was previously suggested that the language in 3.a.i should be changed to add "and walls." He asked if this made sense to the staff, and if they would oppose that change. Ms. Wade said that 3.a reads: "No front yard fences or freestanding walls allowed, except for properties facing Cooper Drive and Bates Creek Road." She said that the second sentence applies to properties along Cooper Drive and Bates Creek Road where the walls may be up to 4 feet in height and a minimum of 2 feet from the sidewalk. She said that if the Commission wants to restrict the retaining walls in a different manner, additional language would be required.

Ms. Beatty asked how significant was the difference in wording on the postcard. Ms. Wade said that the language sent out with the postcard only added the word "freestanding." She then said that it had stated "no freestanding walls or front yard fences." Part of the confusion from the postcard responses was how high the retaining wall would be and if it should be set back. She said that in speaking with the neighborhood association, their intent was not to place future restrictions on any retaining walls. Ms. Beatty then asked if the text change to the amendment was for clarification. Ms. Wade said that it was to clarify the language, as well as for the determination of the height above the unbalanced fill per the Division of Building Inspection discussion. She said that between the Zoning Committee's consideration and the Planning Commission's initiation of the amendment, the staff drafted these changes. She then said that it was to clarify the language and show how retaining walls would be restricted differently from fences for the benefit of the Planning Commission, the Division of Building Inspection, and the Division of Planning for the future, as well as the neighborhood. Mr. Saltee also added that notification was sent to the neighbors in this area for today's hearing and that the notification letter did include the language that is being reviewed today. This is the same language listed in the staff report and on the meeting agenda.

Discussion - Ms. Roche-Phillips said that there are three issues that the Planning Commission is being asked to address. The first issue is whether or not retaining walls would be allowed. The second issue is that the height of the retaining wall will not be higher than 18" tall beyond the unbalanced fill. The third issue is whether or not the retaining walls will be required to have a setback. She said that this area is a walking neighborhood to the University of Kentucky, and asked if the Commission could impose a height restriction on the properties along Cooper Drive and Bates Creek, but not place any restrictions on the other properties. She said that she knows the Montclair area very well, and there are some properties in this area that have fairly steep slopes, including the property in question. She then said that it is curious that the existing retaining walls in this area haven't failed yet due to the steep slopes.

Ms. Roche-Phillips said that, in her opinion, an 18" retaining wall is very low considering that fences can be taller. She then said that she believes the Commission is biting off more than they can chew; and if the original intent of this amendment was to allow retaining walls in the front yards, then only that should be considered. Since there is some confusion among the neighbors as to what was being requested, they can resubmit a request to the Commission to address the height and setback of the retaining walls in the future. Ms. Wade said that there is really not a topographic change for the properties along Cooper Drive and Bates Creek Road, which speaks to Mr. Harvey's comments that there would not be any retaining walls in the area. Ms. Roche-Phillips disagreed, and said that there are properties that abut the football field, KET and at the intersection of Cooper Drive and Bates Creek Road that could very well need retaining walls in the future. Mr. Saltee said that when the staff had surveyed existing walls in front yards in the area, there were one or two properties on Cooper Drive that inherent have a retaining wall, but none on Bates Creek Road. He then said that, as the amendment is drafted, there is no inherent limit on the height of a new retaining wall.

Ms. Boland said that the whole reason for the unbalanced fill restriction was to prevent the property owner from building a 6' wall. She said that a retaining wall retains the soil behind it, but it could stick up 5' above the ground. The purpose of the amendment was never intended to place restrictions on retaining walls. She said that there is nowhere in the Zoning Ordinance that makes a distinction between a retaining wall and a freestanding wall. She then said that the Division of Building Inspection noted that, in respect to safety issues, it was reasonable for the retaining wall to project 18" above the unbalanced fill and it would not be considered a freestanding wall. The only reason this was put in the amendment was to prevent people from abusing the restrictions in order to put up a freestanding wall that was intended to be regulated. She said that this amendment, as it was originally proposed, is not to regulate retaining walls any more than what the Zoning Ordinance generally allows.

Ms. Copeland asked if a third condition could be added to limit the height of the retaining walls to 4' with a minimum 2' setback from the public right-of-way. Ms. Boland said that adding a 3rd condition, which is different from what was being proposed and advertised in the newspaper for public notice, would pose an issue since that was not what the Commission had originally initiated. Ms. Boland said that the Commission could also start the process over again and initiate another amendment. She then said that the Commission must comply with regulations that are set forth with regard to notice. Ms. Copeland asked if the Commission could vote on this issue at today's hearing. Ms. Boland replied negatively.

Closing Comments - Mr. Penn said that, with all due respect, he believes that the Commission just made this request harder than it had to be. He said that this application involves a request from the neighborhood and it did not make sense for the Commission to amend their request at this time. He then said that the Commission should vote on this request based upon its merits and allow the neighborhood to request further changes, if necessary.

Ms. Beatty asked if, once the Commission votes on the issue at hand, the neighborhood can submit another request at a later date. Ms. Boland said that there is nothing in the Zoning Ordinance or the State to prevent a neighborhood from making future requests. She then said that the ND-1 process was never intended to impose restrictions in increments, but rather to initiate the ND-1 after the neighborhood performed the required survey of existing conditions and knew exactly what they desired.

Mr. Cravens said that a new zone change must be done to further change the restrictions in the ND-1 area. Ms. Boland was in agreement.

Ms. Blanton said that it is not good to use tax payers money to get into the middle of neighborhood squabbles.

Action - A motion was made by Mr. Penn, seconded by Mr. Paulsen, and carried 9-0 (Copeland abstained, Berkley and Brewer were absent) to approve MAR 2011-15, for the reasons provided by staff.

VI. **COMMISSION ITEMS** – The Chair announced that any item a Commission member would like to present would be heard at this time.

VII. **STAFF ITEMS** – The Chair announced that any item a Staff member would like to present would be heard at this time.

VIII. **AUDIENCE ITEMS** – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will NOT be heard are those requiring the Commission's formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

IX. **NEXT MEETING DATES** –

Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	November 17, 2011
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	November 23, 2011
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	December 1, 2011
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	December 1, 2011
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	December 8, 2011

X. **ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 3:34 PM.

Mike Cravens, Chair

Lynn Roche-Phillips, Secretary